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隐名股东法律问题研究

Research On Law Problems Of Silent Shareholders

张光辉

指导教师姓名: 朱炎生教授

专 业 名 称: 法律硕士

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内容摘要

隐名股东现象目前在我国的经济生活中非常普遍，与隐名股东相关的法律纠纷也不断产生。但是，由于我国公司法及现行立法缺乏对隐名股东的明确规制，导致目前司法实践中对相关问题和纠纷的处理缺乏统一认识，处理结果难以一致。有关隐名股东法律问题和纠纷的处理，已成为目前司法实践中的热点和难点之一。虽然新的公司法司法解释对有限责任公司隐名股东部分问题有所涉及，但仍然留下不少空白和缺陷，亟待进一步规范和完善。故本人以有限责任公司隐名股东的相关法律问题作为本次研究的主题，侧重从实务角度出发，并结合最新的法律规定，对隐名股东的相关法律问题进行梳理分析和探讨，以期对完善隐名股东规制及相关问题的处理机制有所助益。

本篇论文分为前言、正文、结论三部分，其中正文分为五章。

第一章为隐名股东问题的概述，旨在对隐名股东的概念和相关法律问题作基础分析和阐述，为后面的分析和研究作基础铺垫。本章首先介绍了隐名股东的概念、法律特征，并区分了隐名股东与类似概念的区别；其次从起源和成因两个角度介绍了隐名股东的产生。

第二章为隐名股东的股权取得。主要选取了隐名股东股东资格确认和出资瑕疵责任这两个问题进行分析研讨。其中第一节为隐名股东的股东资格认定问题，重点分析了隐名股东的股东资格认定问题的处理原则，并根据最新的公司法司法解释的新规定，归纳出隐名股东股东资格认定的五个实质要件：1、实际出资；2、存在合法有效的隐名投资合同；3、无违反公司章程限制性规定；4、隐名股东显名化；5、隐名股东已实际参与公司经营管理，享受股东权利并承担股东义务。第二节则阐述了隐名股东出资瑕疵责任问题及处理。

第三章为隐名股东的股权行使。其中主要选取了两个问题进行分析，其中第一节阐述了隐名股东的股权处分问题，并就名义股东擅自处分股权和隐名股东直接处分股权这两种情况分别阐述了其相应的处理原则；第二

节则阐述了隐名股东的表决决议效力问题及处理。

第四章为隐名股东股权保全和执行及投资款返还。第一节阐述了隐名股东股权的保全和执行中的法律问题，分别按名义股东的债权人及隐名股东的债权人对隐名股权申请保全或执行这两种情况，就隐名股东股权保全和执行中的问题及纠纷的处理作了分析。第二节阐述了隐名股东投资款返还的法律问题，分别按隐名股东身份可合法确立及不能合法确立的两种情况，分析了该类问题及相关纠纷的相应处理原则。

第五章为我国隐名股东法律规制的现状及完善建议。第一节介绍了目前我国立法对隐名股东的规制现状及存在问题。第二节阐述了本人对完善隐名股东法律规制的建议，包括立法规范及审判实践应统一把握的四项理念。

结论部分总结了全文的主要内容，并再次强调了完善隐名股东法律规制的必要性和紧迫性。

关键词：隐名股东；股东资格；法律规制

ABSTRACT

Silent shareholder appears to be very popular in the economic life of our country at present, the disputes relative to silent shareholder happen frequently. However, due to lack of specific provisions to standard silent shareholder in the Company Law and current laws, it leads to lack of unite recognize to relative problems and disputes in current law execution practice, the results are also confusion. The solution for silent shareholder problems and disputes has become one of the hot and difficult problems in current law execution practice. Though the latest judicial interpretation to the Company Law has concerned part of the silent shareholder problems for limited liability company, but lots of area are still blank and defects, waiting for further standardization and improvement. So, the author takes the silent shareholder problems of limited liability company as the subject of this research, focusing on the respect of practice, combining the latest law provisions, analyzing and studying relative problems, disputes and solutions of silent shareholder, looking forward to contribute to the improvement of silent shareholder standardization and relative problems solution.

This article is composed by preamble, body and conclusion, the body is divided into six chapters.

Chapter 1 is general statement of silent shareholder, aim at basically analysis and introduce definitions of silent shareholder and relative law problems, as the basis of later analyzing and researching. This chapter firstly introduces the definitions and law characteristics of silent shareholder, and district the difference between silent shareholder and other similar definitions; secondly, introduces the appearance of silent shareholder from the angles of source and cause.

Chapter 2 is share acquire of silent shareholder. Mainly analyze and

discuss the problems of qualification confirmation and contribution defects liability. Among Subchapter 1 Identification Problem of Silent Shareholder's Qualification, emphasize on the solution principle of identification problem of silent shareholder's qualification, and conclude out five material conditions to identify silent shareholder's qualification in accordance with the latest judicial interpretations to the Company Law: 1. the actual contribution; 2. there is a legal valid silent invest contract; 3. no limited Provisions violated to the AOA; 4. silent shareholder appears its name. 5. silent shareholder has participated in the company management actually, enjoying the rights of shareholder and bearing the liabilities of shareholder. Subchapter 2 describes the liability problems and solutions to silent shareholder contribution defects.

Chapter 3 is share right exercise of silent shareholder. Mainly analyze two problems. Among Subchapter 1 states silent shareholder's share right disposal problem, and regarding to disputes of silent shareholder disposes its shares solely and named shareholder disposes its shares directly states each solution principle separately; Subchapter 2 states the validity and solutions of silent shareholder's vote.

Chapter 4 is property preservation, force execution and investment return of silent shareholder. Subchapter 1 states law problems relevant to property preservation and force execution of silent shareholder's share, and analyzes the solutions of problems and disputes in two situations separately when creditor of named shareholder and creditor of silent shareholder apply for property preservation or force execution on silent shareholder's share. Subchapter 2 states the law problems relevant to the investment return of silent shareholder, analyze the solution principle to this kind of problems and relative disputes in two situations separately when the identification of silent shareholder is valid and invalid by law.

Chapter 5 is situations and improvement suggestions to the domestic law provisions of silent shareholder. Subchapter 1 introduces the current situations and existing problems of the provisions in our domestic laws. Subchapter 2 states

my personal suggestions for improving the provisions of silent shareholder, including four ideas which should be complied with both in the rules of legislation and trial practices.

The conclusion summarizes the important contents of the article, and emphasizes the necessary and urgency of improving the provisions of silent shareholder.

Key Words: Silent Shareholders; Shareholder's Qualification; Law Provision

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